

Murder.

An. Code, sec. 362. 1904, sec. 329. 1888, sec. 210. 1809, ch. 138, sec. 3. 1824, ch. 144.

397. All murder which shall be perpetrated by means of poison, or lying in wait, or by any kind of wilful, deliberate and premeditated killing shall be murder in the first degree.

In an indictment for murder, the circumstances determining the degree as defined by this and the following sections need not be averred. Object of act of 1809, ch. 138, in dividing murder into degrees. Indictment for murder in the technical language of the common law, includes all circumstances of aggravation and traverser is liable to be convicted of the inferior as well as of the higher grades of that offense and *vice versa*. When a statute creates an offense or increases the punishment thereof, the indictment must aver the circumstances constituting the offense or increasing the punishment. Clerical misprision. Arraignment and plea need not be repeated when the case is removed thereafter. Docket entries. A writ of error held not to lie as alleged errors were subjects of demurrer—see sec. 533. *Davis v. State*, 39 Md. 370. And see *Weighorst v. State*, 7 Md. 451.

Act of 1809, ch. 138, in dividing the common law crime of murder into first and second degrees and attaching corresponding penalties, did not create a new offense. *Hanan v. State*, 63 Md. 126.

Since murder was one of the crimes enumerated in act of 1793, ch. 57, sec. 10, a person convicted thereof might be sentenced to labor on the public roads. *State v. Negro Ben*, 1 H. & J. 99.

This section referred to in construing sec. 15—see notes thereto. *Foote v. State*, 59 Md. 269.

This section referred to in construing sec. 139—see notes thereto. *Negro Hammond v. State*, 14 Md. 148.

See sec. 565 and notes to sec. 402.

As to indictments for murder, see sec. 563.

An. Code, sec. 363. 1904, sec. 330. 1888, sec. 211. 1809, ch. 138, sec. 3.

398. All murder which shall be committed in the perpetration of, or attempt to perpetrate any arson, shall be murder in the first degree.

See notes to sec. 397.

An. Code, sec. 364. 1904, sec. 331. 1888, sec. 212. 1809, ch. 138, sec. 3.

399. All murder which shall be committed in the burning or attempting to burn any barn, tobacco house, stable, warehouse or other outhouse, not parcel of any dwelling house, having therein any tobacco, hay, grain, horses, cattle, goods, wares or merchandise, shall be murder in the first degree.

See notes to sec. 397.

An. Code, sec. 365. 1904, sec. 332. 1888, sec. 213. 1809, ch. 138, sec. 3.

400. All murder which shall be committed in the perpetration of, or attempt to perpetrate any rape, sodomy, mayhem, robbery, or burglary shall be murder in the first degree.

See notes to sec. 397.

An. Code, sec. 366. 1904, sec. 333. 1888, sec. 214. 1809, ch. 138, sec. 3.

401. All other kinds of murder shall be deemed murder in the second degree.

See notes to sec. 397.

An. Code, sec. 367. 1904, sec. 334. 1888, sec. 215. 1809, ch. 138, sec. 3.

402. And the jury before whom any person indicted for murder shall be tried shall if they find such person guilty thereof ascertain in their